should be justiciable only if justifying reprisal between independent nations. *Held*, that broad principles of state equality should control, and that the body of decisions on interstate controversies constitute interstate common law. *Kansas* v. *Colorado*, 206 U. S. 46. See NOTES, p. 132.

CONSTITUTIONAL LAW — SEPARATION OF POWERS — JUDICIAL RECOUNT AND RE-CANVASS OF BALLOTS. — A statute provided that upon petition by any candidate for a certain office the Supreme Court must summarily canvass the ballots cast. *Held*, that the statute imposes judicial duties on the courts and is therefore valid. *Metz* v. *Maddox*, 105 N. Y. Supp. 702 (App. Div.). See NOTES, p. 138.

CONSTITUTIONAL LAW — WHO CAN SET UP UNCONSTITUTIONALITY — ESTOPPEL THROUGH LAPSE OF TIME. — The plaintiff sought to assail an act of the legislature, passed thirteen years before, dividing the state into senatorial districts. *Held*, that it is too late to question the validity of the act. *Adams* v. *Bosworth*, 102 S. W. 861 (Ky.). See NOTES, p. 133.

CRIMINAL LAW — SENTENCE — FEDERAL COURTS' RIGHT TO IMPRISON TO ENFORCE FINE. — The defendant was convicted under a federal statute ordering punishment by a fine, but providing no penalty of imprisonment. *Held*, that the court has common law jurisdiction to decree that the defendant shall stand committed to jail until the fine be paid, or he be otherwise discharged according to law. *Ex parte Barclay*, 153 Fed. 669 (Circ. Ct., Dist. Me.).

A sentence which does not conform to the punishment provided by statute is void. *In re Pridgeon*, 57 Fed. 200. But at common law, a sentence of fine may provide that the defendant stand committed till his fine be paid. *Harris* v. *Commonwealth*, 23 Pick. (Mass.) 280. The theory allowing such imprisonment is that the fine alone is the penalty, whereas the imprisonment enforces its collection. *Ex parte Bryant*, 24 Fla. 278. The commitment being on this basis, the sentence in the principal case would not be void in a common-law court as exceeding the statute. But whether federal courts have common-law powers in this respect admits of doubt. The courts of the United States, as a general rule, have no common-law jurisdiction in criminal cases. *U. S.* v. *Lewis*, 36 Fed. 449. But they are authorized to adopt common-law procedure when the jurisdiction and powers given by United States laws do not provide adequate remedies. U. S. COMP. STAT. 1901, § 722. Such inadequacy did not exist in the principal case, since federal statutes provide for the collection of fines by execution against the defendant's property, as in civil cases. U. S. COMP. STAT. 1901, § 1041. The decree of imprisonment seems therefore unjustified as an exercise of common-law powers. A previous decision, however, supports such a sentence, although the court gave no reasons for its conclusion. *Ex parte Jackson*, 96 U. S. 727, 737.

DECEIT — NEGLIGENCE AS SUBSTITUTE FOR INTENTIONAL UNTRUTH — LIABILITY OF NATIONAL BANK DIRECTORS. — The defendant, a director of a national bank, participated in the report of the financial condition of the bank required by statute. The report was in fact false, and the plaintiff acted thereon and suffered damage. *Held*, that the defendant is liable only if he published the report with knowledge of its falsity. *Yates* v. *Jones Nat'l Bank*, 206 U. S. 158.

Apart from statute it would seem that liability would attach if there was no honest belief in the truth of the report. See *Derry* v. *Peek*, 14 App. Cas. 337. The National Bank Act requires the publication of a verified report, and provides that every director who knowingly participates in the violation of any provision of the act shall be liable. 3 U. S. COMP. STAT. 1901, §§ 5211, 5239. And the present case holds that this statute excludes common law liability for any violation of the duties expressly imposed thereby, and that *scienter* must be shown to maintain an action. The case is in conflict with several prior decisions. It has been held that a director is an insurer of the truth of his

report. *Gerner* v. *Mosher*, 58 Neb. 135. And, on the other hand, negligence has been held essential to sustain a recovery. See *Mason* v. *Moore*, 73 Oh. St. 275 As national banks are federal institutions, it seems desirable that the liability of their directors should be uniform. The present construction, by making that liability depend upon federal statutes, insures this uniformity in the future regardless of the local laws of the individual states.

DEEDS — BOUNDARIES — LAND BOUNDED ON PRIVATE WAY. — Land conveyed was described as bounded "on a passageway." The grantor owned the way mentioned, but no land beyond. *Held*, that the deed conveys the fee to the centre of the way. *Gould* v. *Wagner*, 41 Banker and Tradesman 689 (Mass., Sup. Ct., Oct. 15, 1907).

This case follows the general rule that a deed naming as a boundary a public or private way owned by the grantor conveys title to the centre of the way. *Gould* v. *Eastern R. R. Co.*, 142 Mass. 85. Only an express intention will limit the grant to the side of the way. *Salter* v. *Jonas*, 39 N. J. L. 469; *contra*, *Buck* v. *Squiers*, 22 Vt. 484. In the present case, however, since the grantor owned no land beyond the way, the court might well have sustained a presumption that he did not intend to retain any portion of the way. This presumption is reasonable, for it is unlikely that the grantor would reserve a strip of land of use only to the grantee. *Haberman* v. *Baker*, 128 N. Y. 253. Furthermore, on grounds of public policy this construction should be applied to such conveyances to prevent the existence of innumerable narrow strips of land, title to which is always difficult to ascertain because the owner is never in possession. *In re Robbins*, 34 Minn. 99. But where the grantor would preserve riparian rights by retaining one-half his highway, the presumption of intent to convey the whole way should be rebutted. *Contra*, *Johnson* v. *Grenell*, 188 N. Y. 407.

DIVORCE — ALIMONY — RIGHT TO MODIFY DECREE ADOPTING SEPARATION AGREEMENT. — The plaintiff and the defendant, pending a libel for divorce, made an agreement under which the plaintiff was to receive $6000 and relinquish all her claims for alimony. This agreement was adopted by the court in the decree. Subsequently the plaintiff sought a modification of the decree giving her more alimony. N. H. Rev. Stat. 1843, c. 148, § 16, allows the courts on proper application to make such new orders as may be necessary respecting alimony. *Held*, that the court may modify the decree. *Wallace* v. *Wallace*, 67 Atl. 580 (N. H.).

The objections to recognizing the agreement, so as to preclude the plaintiff from applying for additional alimony, are as follows: first, that such contracts are against public policy because they tend to facilitate collusive divorce and because the amount of alimony may be inequitable; and second, that a married woman cannot contract at common law. But the court's decree in accordance with the agreement removes the first objection, as it is the duty of the court to see that the divorce is free from collusion, and that the provisions for alimony are fair. *Julier* v. *Julier*, 62 Oh. St. 90. So in states where a married woman may contract, such an agreement and decree will prevent the husband from obtaining a reduction of the alimony, and the wife from obtaining an increase. *Martin* v. *Martin*, 65 Ia. 255; *Henderson* v. *Henderson*, 37 Ore. 141. Even in common law states separation agreements not against public policy are enforced in the wife's favor. *Calame* v. *Calame*, 25 N. J. Eq. 548; *Randal* v. *Randal*, 37 Mich. 563. No valid reason appears why a similar disregard of a married woman's incapacity to contract should not be made against her interest. Consequently, it seems that the court should not consider an application forbidden by the separation agreement.

EMINENT DOMAIN — WHEN IS PROPERTY TAKEN — RESTRICTIVE AGREEMENTS ON THE USE OF LAND. — Land subject to restrictive agreements in favor of the plaintiff was taken by eminent domain. *Held*, that the plaintiff has no right to compensation. *Wharton* v. *United States*, 153 Fed. 876 (C. C. A., First Circ.). See NOTES, p. 139.